IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 249 OF 2005

M/s.Solanki Tailors & anr. ... Appellants.
Versus.
(Prof.) Sudarshan Kumar & others. ... Respondents.

Shri Nitin Raut for the Appellants.

Shri Rais with Shri Ashok Varma for the Respondent No.1.

CORAM : ABHAY S. OKA, J.

DATED : 30th March, 2005.

P.C.:

1. Heard learned Counsel appearing for the parties.

2. Admit. Respondent No.1 waives service.

3. On the prayer made by the learned Counsel for the Appellants, names of the Respondents Nos.3 and 4 are permitted to be deleted. The learned Counsel for the Appellants states that the notice is served on the Respondent No.2.

4. The learned Counsel for the Appellants has placed on record an affidavit of the Proprietor of the Appellant No.1. The learned Counsel states that the said affidavit is filed without prejudice to the rights and contentions of the Appellants in the pending suit. The learned Counsel for the Appellants states that the Proprietor of the Appellant No.1 is present in Court.

He states that the P.C.O. booth and the table referred to in paragraph 2 of the said affidavit are of the Proprietor of the Appellant No.1. The said affidavit is taken on record and marked as "X" for identification.

The said affidavit contains the following undertakings:

> "2. I undertake to remove my P.C.O. along with the tables outside the Shop No.4.
>
> 3. I also undertake not to use the open platform admeasuring 4 ft. by 2 ft. which is outside the entrance of shop No.4.
>
> 4. I also undertake to keep the entrance passage which is about three feet wide between the staircase line and the wall free for ingress and egress."

The above undertakings contained in the affidavit marked "X" are accepted. The learned Counsel for the Appellants on instructions of the Proprietor of the Appellant No.1 states that the P.C.O.booth will be removed within a period of two weeks from today and the tables will be removed immediately.

5. At this stage the learned Counsel appearing for the Respondent No.1 stated that by accepting the

undertakings given by the Appellant No.1 the Appeal may be disposed of in terms of the undertakings without assigning any reason and with a direction to the trial Court to expedite the hearing of the suit. The learned Counsel for the Respondent No.1 stated that the area of the tailoring shop No.4 in possession of the Appellant is less than 13' x 3'. However, I am not adjudicating upon the dispute as regards the area of shop No.4 as it is a matter of evidence to be led by the parties. All contentions in that behalf are kept open.

6. Hence I pass the following order:

i) The undertakings given by the Proprietor of the Appellant No.1 in terms of paragraphs Nos.2 to 4 of the affidavit tendered today and marked "X" for identification are accepted.

ii) In view of the undertakings as above, the Judgment and order dated 24th December 2004 is substituted by the following order:

. "(a) Till final disposal of the suit the Appellants will not install or keep any P.C.O. booth, tables or any other article at the place where the present P.C.O.booth and the tables are kept by the Appellants.

The Appellants are also restrained till the disposal of the suit from using the open platform admeasuring 4'x4' which is outside the entrance of shop No.4.

. (b) Till disposal of the suit, the Appellants are restrained from obstructing the entrance passage which is meant for ingress and egress having width of about 3 ft. between the staircase line and the wall.

. (c) Notice of Motion No.5152 of 2004 is disposed of in the above terms."

iii) The hearing of the suit is expedited and the learned trial Judge is directed to hear and decide the suit as expeditiously as possible and in any event on or before 30th April 2006.

iv) All contentions of the parties on merits are expressly kept open.

v) It is made clear that the undertakings which are accepted are without prejudice to the rights and contentions of the parties in the pending suit.

vi) The Appeal is disposed of in the above terms with no order as to costs.

vii) Parties and the concerned trial Court to act on an authenticated copy of this order.

Judge.